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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES JOSEPH LEE, JR.,

Defendant and Appellant.

B285413

Los Angeles County

Super. Ct. No. BA456272

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Robert J. Perry, Judge. Affirmed.

Edward H. Schulman, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Zee Rodriguez and Michael C. Keller,  
Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Charles Joseph Lee, Jr., of committing a lewd act on a child. He appeals, arguing the evidence was insufficient, the trial court should have given an instruction on simple battery, and the court abused its discretion in denying his motion to represent himself. We affirm.

### **BACKGROUND**

At trial, Cassidy L. testified that on April 7, 2017, she was 13 years old and in the eighth grade, waiting at a bus stop to go home from school. Lee approached her and asked her name and where she was headed. She did not answer, but Lee told her his name was Charles and he was headed to Manchester and Vermont. Lee continued talking about prostitution (“how with prostitution you can get more money when you are going with someone who has more money”), and “pussy sales.” He was about an arm’s length away, and Cassidy felt uncomfortable.

The bus arrived, and Cassidy boarded and sat in the back. Lee sat next to her. He told her “younger women should be in a relationship with older men and younger men should be in a relationship with older women to get a feel of how relationships should be since the older men and women have already gone through relationships,” and “when I turned 18, I can be his—he’ll give me his phone number.” Lee leaned forward as he spoke, and touched the middle of her thigh with his left hand. Cassidy started to cry, shouted that Lee had touched her, and changed seats.

Lee got off the bus, and Cassidy told the bus driver what had happened. The police arrived, Cassidy made a report, and her parents picked her up. As they drove past Manchester and Vermont, Cassidy identified Lee at the bus stop. Her parents called the police, who arrested Lee.

Mario H. testified that he and his brother Kevin H. were on the bus that day, sitting in the back. Mario was wearing headphones and listening to music so he couldn't hear what Lee said, but he saw Lee touch Cassidy's right thigh with his left hand. Cassidy started to cry, said Lee had touched her, and changed seats. Mario asked Lee: "[W]hy did you do that? . . . You're a grown man. She's a little girl." Lee replied: "I'm not a pedophile," and "I'm going to get off before I kill one of you guys."

Kevin testified he too was wearing headphones, but he could hear Lee talking about "sexual things," such as "older men should get younger women and they're more beautiful and more attractive," and "fucking pussy and this and that." He noticed Lee leaning close to Cassidy, who was crying and clutching her backpack. Kevin took off his headphones and asked Cassidy if she was okay. She replied: "[H]e's trying to touch me." Lee became defensive, saying, "[N]obody's trying to touch you," and Kevin asked him: "[A]re you a pedophile or what?" Lee got up, showed Kevin a box cutter, and said: "I'm going to get off the bus before I kill any of you niggers."

The jury saw a surveillance video of the events on the bus (which did not show the actual touching).

The jury convicted Lee of one count of lewd act upon a child under the age of 14 years. (Pen. Code, § 288, subd. (a).) Lee admitted a prior serious felony conviction. The trial court sentenced Lee to a 12-year prison term (six years for the substantive offense, doubled for the prior strike). Lee filed a timely notice of appeal.

## DISCUSSION

### 1. *Sufficient evidence supports the verdict*

We reject Lee's argument that the evidence was insufficient to support a finding that he acted with a lewd intent when he touched Cassidy's thigh. A rational jury, viewing the evidence in the light most favorable to the prosecution, easily could conclude from the evidence that he touched Cassidy with lewd intent. (*People v. Powell* (2011) 194 Cal.App.4th 1268, 1286.)

A violation of Penal Code section 288, subdivision (a) requires proof that when the defendant touched a child under the age of 14 years, he had the intent to arouse or gratify his (or the child's) lust, passion, or sexual desire. (*People v. Martinez* (1995) 11 Cal.4th 434, 444.) While the manner of touching is relevant, "any touching of an underage child is 'lewd or lascivious' within the meaning of section 288 where it is committed for the purpose of sexual arousal." (*Id.* at p. 445.) Even an outwardly innocuous and inoffensive touching suffices, if accompanied by the required intent. (*People v. Lopez* (1998) 19 Cal.4th 282, 289.) "[T]he jury can look to surrounding circumstances and rely on them to draw inferences about [the defendant's] intent." (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1160.)

The testimony provided ample evidence of Lee's lewd intent. He approached 13-year-old Cassidy at the bus stop and spoke to her about prostitution, how to make the most money, and "pussy sales." After Lee followed Cassidy to the back of the bus and sat next to her, he told her younger women should be in a relationship with older men, when she turned 18 she could "be his," and he would give her his phone number. He then leaned forward and touched the middle of her thigh. Lee's sexual comments to Cassidy were reasonable and credible evidence to

support the jury's conclusion that he acted with the required "intent to sexually exploit a child" when he touched her thigh. (*People v. Valenti, supra*, 243 Cal.App.4th at pp. 1157-1158, 1160.)

**2. *The trial court had no duty to instruct on simple battery***

Lee argues that the trial court had a sua sponte duty to instruct on simple battery as a lesser included offense. As he concedes, we are bound by the California Supreme Court's holding that battery is not a lesser included offense of lewd conduct with a child. (*People v. Shockley* (2013) 58 Cal.4th 400, 405-406.)

**3. *Lee's request to represent himself was untimely, and the trial court was within its discretion to deny the request***

We also reject Lee's argument that his request to represent himself was timely, and that the trial court abused its discretion in denying his request to represent himself. On Thursday, September 21, 2017, four months after Lee's preliminary hearing, and three and a half months after the information was filed and Lee pleaded not guilty, the prosecutor stated he was ready for trial; defense counsel stated she would be ready the following Monday. The trial court continued the case for trial on Monday. Lee then stated he wanted to exercise his right under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*), to "take over my case" and represent himself. The court asked if he would be ready for trial on Monday, and Lee said, "No," because "I would have to have the investigators investigate my case." The trial court responded: "[Y]our request to represent yourself is not timely and it is denied."

Lee then requested new counsel, and the trial court held a hearing under *People v. Marsden* (1970) 2 Cal.3d 118. After the hearing the court denied the motion for new counsel (Lee does not appeal that denial). Lee's counsel reiterated that Lee wanted to represent himself and continue trial. Reminding Lee that his request was not timely because trial was imminent, the court denied his request for self-representation.

When a request to exercise the right to self-representation is untimely—not made “‘within a reasonable time prior to the commencement of trial’”—the defendant's demand to discharge his counsel and assume his own defense is no longer a matter of right but “‘shall be addressed to the sound discretion of the court.’” (*People v. Buenrostro* (2018) 6 Cal.5th 367, 425 (quoting *People v. Windham* (1977) 19 Cal.3d 121, 127-128); *People v. Jenkins* (2000) 22 Cal.4th 900, 959.) There is no specific time before trial when a *Faretta* motion is untimely; we consider the totality of the circumstances at the time the defendant makes a motion to represent himself. (*People v. Lynch* (2010) 50 Cal.4th 693, 724.) The purpose of the timeliness requirement is to prevent the defendant from misusing a self-representation request unjustifiably to delay trial or obstruct the orderly administration of justice. (*Id.* at p. 722.) We consider not only the time remaining before the trial date, but “whether trial counsel is ready to proceed to trial, the number of witnesses and the reluctance or availability of crucial trial witnesses, the complexity of the case, any ongoing pretrial proceedings, and whether the defendant had earlier opportunities to assert his right of self-representation.” (*Id.* at p. 726.)

Lee made his request on the Thursday before the Monday scheduled for trial, giving no reason for the lateness of his

request. (See *People v. Windham*, *supra*, 19 Cal.3d at p. 128, fn. 5.) His trial counsel was ready to start trial on Monday. The prosecutor also was ready. Lee had had four other court appearances after the preliminary hearing, and had not requested self-representation. “Motions made just prior to the start of trial are not timely.” (*People v. Scott* (2001) 91 Cal.App.4th 1197, 1205.) Under these circumstances, Lee’s request for self-representation on the eve of trial was not made within a reasonable time before trial, and was untimely.

We therefore consider whether the trial court abused its discretion in denying the request, including such factors as the quality of counsel’s representation, the reasons for the request, the length and stage of the proceedings, and the disruption and delay likely to follow the granting of the request. (*People v. Clark* (1992) 3 Cal.4th 41, 100-101.) We will affirm the denial of an untimely motion for self-representation when “there were sufficient reasons on the record to constitute an implicit consideration of these factors.” (*People v. Scott*, *supra*, 91 Cal.App.4th at p. 1206.)

Lee stated only that he wanted to take over and get investigators to “investigate [his] case.” This is not a reasonable basis for dissatisfaction with the quality of his counsel’s representation. Lee’s motion for new counsel was denied, and he does not argue on appeal that counsel’s representation was deficient. Starting over from scratch to “investigate” this relatively simple case would have required an indefinite continuance and certainly would have disrupted the proceedings, unjustifiably delayed the trial, and obstructed the orderly administration of justice. Lee’s legitimate interest in self-representation did not outweigh the considerable delay and

potential for abuse that would follow granting of the motion. (*People v. Hall* (1978) 87 Cal.App.3d 125, 132; *People v. Clark*, *supra*, 3 Cal.4th at p. 101.) The trial court acted within its discretion when it denied Lee's untimely request for self-representation.

**DISPOSITION**

The judgment is affirmed.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.